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Date: February 1, 2005	Phone Number	Fax Number
To: Appeal Briefs- Patents, USPTO		(703) 872-9306
From: Kevin J. Zilka		

Docket No.: NA11P263/99.010.01**App. No: 09/471,630****Total Number of Pages Being Transmitted, Including Cover Sheet: 28****Message:**

Sirs,

While doing an audit of this file we noticed that our Appeal Brief filed 6/18/2004 does not show up on PAIR. A phone call to the Patent Office revealed that our check has been cashed, but the documentation has not been entered.

We are hereby re-submitting a copy of the documentation with a copy of the return receipt postcard that shows receipt by your office on 6/21/2004.

Because of its size, we are not submitting the Appeal Brief in triplicate. However, should that be required please let us know and we will be happy to provide it.

In the event you have any questions or require further information please do not hesitate to contact me at (408) 971-2573.

Thank you,

Kevin J. Zilka

☒ *Original to follow Via Regular Mail* ☒ *Original will Not be Sent* ☐ *Original will follow Via Overnight Courier*

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AT (408) 971-2573 AT YOUR EARLIEST CONVENIENCE

February 1, 2005

Practitioner's Docket No. NAI1P263/99.010.01

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of: Glen Sonnenberg

Application No.: 09/471,630

Group No.: 2131

Filed: 12/24/1999

Examiner: Jackson, Jenise

For: SYSTEM AND METHOD FOR SELECTIVE COMMUNICATION SCANNING AT A
FIREWALL AND A NETWORK NODE

FEB 01 2005

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION-37 C.F.R. § 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on May 27, 2004.
2. STATUS OF APPLICANT

This application is on behalf of other than a small entity.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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☒ deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

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37 C.F.R. § 1.10*

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☐ facsimile transmitted to the Patent and Trademark Office, (703) _____
Signature

Date: 6/18/04

Erica L. Farlow

(type or print name of person certifying)

* Only the date of filing (* 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under * 1.8 continues to be taken into account in determining timeliness. See * 1.703(f). Consider "Express Mail Post Office to Addressee" (* 1.10) or facsimile transmission (* 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief--page 1 of 2

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

other than a small entity \$330.00

Appeal Brief fee due \$330.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$330.00
Extension fee (if any) \$0.00

TOTAL FEE DUE \$330.00

6. FEE PAYMENT

Attached is a check in the amount of \$330.00.

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. NAI1P263).

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Signature of Practitioner

Kevin J. Zilka
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San Jose, CA 95172-1120
USA

Transmittal of Appeal Brief--page 2 of 2

COPY

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Signature of Practitioner

Kevin J. Zilka
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P.O. Box 721120
San Jose, CA 95172-1120
USA

Transmittal of Appeal Brief--page 2 of 2

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICERECEIVED
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FEB 01 2005

In re application of:)
Sonnenberg et al.) Group Art Unit: 2131
Application No. 09/471,630) Examiner: Jackson, Jenise E.
Filed: 12/24/99) Date: June 18, 2004
For: SYSTEM AND METHOD FOR)
SELECTIVE COMMUNICATION)
SCANNING AT A FIREWALL AND A)
NETWORK NODE)

Commissioner for Patents
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF (37 C.F.R. § 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on May 27, 2004.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 C.F.R. § 1.192(a))

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 1.192(c)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF INVENTION

VI ISSUES
VII GROUPING OF CLAIMS
VIII ARGUMENTS
APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

The final page of this brief bears the practitioner's signature.

I REAL PARTY IN INTEREST (37 C.F.R. § 1.192(c)(1))

The real party in interest in this appeal is Networks Associates Technology, Inc.

II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 1.192(c)(2))

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no other such appeals or interferences.

III STATUS OF CLAIMS (37 C.F.R. § 1.192(c)(3))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-22.

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims withdrawn from consideration but not canceled: None
2. Claims pending: 1-22
3. Claims allowed: None
4. Claims rejected: 1-22

C. CLAIMS ON APPEAL

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The claims on appeal are: 1-22

IV STATUS OF AMENDMENTS (37 C.F.R. § 1.192(c)(4))

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

V SUMMARY OF INVENTION (37 C.F.R. § 1.192(c)(5))

In one embodiment, a system and methods are provided for scanning a communication that is received at a firewall on behalf of a destination node on one or the other of the firewall and the destination node. See Figure 1B. In particular, a set of rules, criteria or parameters may be established to determine when a communication is to be scanned for target content (e.g., computer viruses, programming objects, content of a particular type) on a destination node instead of the firewall. Note operation 516 of Figure 5 and the accompanying description. Overall performance of the firewall may thus be enhanced by off-loading some of its communication scanning responsibilities to a trusted host or node that is connected to the firewall.

VI ISSUES (37 C.F.R. § 1.192(c)(6))

Issue # 1: The Examiner has rejected Claims 1-22 under 35 U.S.C. §102(e) as allegedly being anticipated by Segal (6,345,299).

VII GROUPING OF CLAIMS (37 C.F.R. § 1.192(c)(7))

The claims of the following groups do not stand or fall together. Following is the grouping of claims. In the following section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1: Grouping of Claims

Group #1: Claims 1-2, 9, 10-11, and 13-21

Group #2: Claim 3

Group #3: Claims 4 and 5

Group #4: Claim 6

Group #5: Claim 7

Group #7: Claim 8

Group #8: Claim 12

Group #9: Claim 22

VIII ARGUMENTS (37 C.F.R. § 1.192(c)(8))

Issue #1:

The Examiner has rejected Claims 1-22 under 35 U.S.C. §102(e) as allegedly being anticipated by Segal (6,345,299).

Group #1: Claims 1, 9, 10-11, and 13-21

With respect to Group #1, Appellant respectfully disagrees with such rejection, since the Examiner's sole reference fails to meet each of appellant's independent claim limitations.

The Examiner continues to rely on the following excerpt from Segal to make a prior art showing of appellant's claimed "maintaining a set of criteria for determining when one of said communications may be scanned at a computer node connected to the firewall instead of at the firewall" (see Claims 1 and 17), "a set of criteria to be applied to said communication to determine if said communication is to be scanned for target content at the firewall or at the destination node" (see Claim 18), and "a set of rules configured to determine whether said communication is to be scanned for said target content on said firewall or on the first node" (see Claim 19).

"In accordance with the invention, the network 40 the units 43, 45, 46, 47, 49, and 50 each comprise a shared list setting forth a plurality of listed nodes and a set of access privileges for each listed node. Access privileges are the types of transmissions that a given node listed in the shared list is permitted to make. For example, consider the case where node B1 is a computer or LAN at an accounting firm. The firm may want to restrict the nodes from which it receives or transmits E-mail or certain types of transmissions (i.e. File Transfer Protocol (FTP)). In this case, the firm wishes to receive e-mail only from its clients Z1, Y2, and X4. Node B1 would instruct node 45 to provide that the shared list residing at security node 45 would intercept all e-mail and only allow e-mail from nodes Z1, Y2 and X4 but in this distributed system, it is also possible for security node 49 to only allow e-mail from Y2, node 50 prohibits e-mail from Z2 and so forth. Thus, with the cooperation of other nodes, it is virtually impossible to overwhelm node 45 with unpermitted transmissions. The shared list may provide with respect to any listed node that it can only transmit to certain other listed nodes and, with respect to those nodes it can transmit to, restrictions applicable to such transmissions." (col. 2, line 60 - col. 3, line 15)

Specifically, with respect to appellant's claimed "maintaining a set of criteria for determining when one of said communications may be scanned at a computer node connected to the firewall instead of at the firewall" (emphasis added), the Examiner points out the foregoing discussion of the exemplary use of the shared list in Segal, and then concludes "Segal discloses that the node and the firewall communicate to determine which transmissions are to be transmitted."

Even if the Examiner's conclusion summary accurately describes what Segal discloses, it still fails to meet all of appellant's claim limitations. In the Examiner's cited example above, the node B1 is not capable of any scanning, thus there is clearly no disclosure, teaching or even suggestion of any sort of determining when one of said communications may be scanned at a computer node connected to the firewall instead of at the firewall. Only appellant teaches and claims such specific interplay between a computer node and a firewall, whereby scanning occurs on one or the other based on a set of criteria.

The Examiner continues by stating that Segal inherently discloses a virus scanner, in view of the excerpt from Segal below:

"The situation can be improved upon by providing a set of firewall-type commands that include lists of which nodes, sources, networks are allowed to use certain destinations. These commands can be utilized by filtering devices and/or security devices such as firewalls, ingress

Appellant's Brief--page 5 of 22

nodes, switches, which would be informed which destination nodes, addresses, ports, are permitted to which source nodes or networks. These filtering devices and/or security devices may be separate stand-alone components or their capability may be integrated into other, possibly already existing, devices." (col. 3, lines 35-45)

Further, the Examiner concludes that "Segal discloses a firewall that filters and scans data."

First, appellant notes that there is no mention of "scanning" in Segal. Moreover, even if there were some sort of scanning inherently disclosed in Segal, it would still fail to meet appellant's claimed "virus scanner" feature.

Appellant asserts that the disclosure of a firewall does not necessarily meet the limitation of a "virus scanner," neither explicitly nor implicitly. See, for example, an illustrative definition of a firewall, indicating the broadest plain and ordinary meaning thereof.

"firewall

A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both. Firewalls are frequently used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially intranets. All messages entering or leaving the intranet pass through the firewall, which examines each message and blocks those that do not meet the specified security criteria.

There are several types of firewall techniques:

Packet filter: Looks at each packet entering or leaving the network and accepts or rejects it based on user-defined rules. Packet filtering is fairly effective and transparent to users, but it is difficult to configure. In addition, it is susceptible to IP spoofing.

Application gateway: Applies security mechanisms to specific applications, such as FTP and Telnet servers. This is very effective, but can impose a performance degradation.

Circuit-level gateway: Applies security mechanisms when a TCP or UDP connection is established. Once the connection has been made, packets can flow between the hosts without further checking.

Proxy server: Intercepts all messages entering and leaving the network. The proxy server effectively hides the true network addresses.

In practice, many firewalls use two or more of these techniques in concert.

A firewall is considered a first line of defense in protecting private information. For greater security, data can be encrypted."

Appellant's Brief--page 6 of 22

<http://www.webopedia.com/TERM/f/firewall.html>

There is simply no mention of any sort of virus scanning in such definition. Appellant further brings the Examiner's attention to what is well known in the computer industry, namely virus scanner and firewall products/features are separate entities which, may be used in combination, but are nevertheless functionally different. Again, the Segal reference fails to meet appellant's claims.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Segal reference, in view of the arguments set forth hereinabove.

Group #2: Claim 3

With respect to Group #2, the Examiner relies on the following excerpt from Segal to make a prior art showing of appellant's claimed "marking said second communication before said forwarding to said second computer node."

"The firm may want to restrict the nodes from which it receives or transmits E-mail or certain types of transmissions (i.e. File Transfer